

CHAPTER VI EXECUTIVE SUMMARY

Results of audit We reported short levy, excess grant of refund, loss of revenue etc., amounting to ₹ 761.86 crore in 4,132 cases, on the basis of test check of the records relating to entertainment duty, electricity duty, state education cess, employment guarantee cess, tax on buildings (with larger residential premises), and profession tax conducted during the year 2012-13.

During the year 2012-13 as well as during earlier years, the concerned Departments accepted underassessment, short levy, etc. and recovered ₹ 116.32 crore in 1,826 cases of which 391 cases involving ₹ 1.23 crore related to 2012-13.

What we have highlighted in this Chapter

A. Taxes and duties on Electricity

A Performance Audit on “**Levy and collection of Electricity Duty, Tax on sale of electricity and Inspection Fees**” revealed the following:

Figures of arrears of ₹ 843.36 crore on account of Electricity Duty (ED)/Tax on Sale of Electricity (TOSE)/Inspection fees furnished/collected by the Department was deficient as it did not include the amount of ED and TOSE billed but not collected by the private companies/franchisees.

(Paragraph 6.2.8)

Absence of provisions in the Acts for remittance of the amount of proportionate ED and TOSE inherent in Delayed Payment Charges(DPC) and Interest on Arrears levied by private companies on delayed payments by consumers, resulted in undue benefit of the private companies by at least ₹ 24.98 crore at the cost of Government.

(Paragraph 6.2.9.1)

Variation with respect to the ED/TOSE payable as per the returns and ED/TOSE actually paid was of ₹ 310.80 crore.

(Paragraph 6.2.9.2(b) to (d))

In the office of the Electrical Inspector (EI) Mumbai Central, 66 *per cent* of the returns due were not received from the generating units concerned due to which correctness of ED paid were not monitored.

(Paragraph 6.2.9.2(e))

Cross-linkage of identical data available in returns in Form 'A' and Form 'C' revealed variation in the units reported as sold/consumed, for levy of electricity duty and tax on sale of electricity to the extent of 639.95 crore and 68.12 crore, respectively, reflecting deficiency in monitoring.

(Paragraph 6.2.9.3)

Interest was not levied on delayed payment of ED and TOSE aggregating ₹ 5,773.04 crore by MSEDCL, during the periods 2010-11 and 2011-12, which resulted in non-realisation of interest of ₹ 126.87 crore.

(Paragraph 6.2.10.1)

Incorrect grant of exemption from payment of TOSE to Railways for utilisation of energy on its residential and commercial areas, though not envisaged in the Maharashtra Tax on Sale of Electricity act, 1963 (MTSE Act), resulted in short realisation of tax of ₹ 1.55 crore.

(Paragraph 6.2.10.3)

Though inspections in respect of lifts and electrical installations, exist, it was not carried out or conducted regularly leading to shortfall in inspections.

(Paragraphs 6.2.9.5 and 6.2.10.4)

Details of utilisation of funds earmarked for Rural Electrification and Green Cess was not available with the Department.

(Paragraph 6.2.10.7)

Recommendations:

The Government may consider:

- introducing a provision in both the Acts or issuing necessary executive orders, as the case may be, such that, the private licensees/franchisees pay to the Government the proportionate amount of DPC and IOA collected by them on the element of ED and TOSE included in the electricity bills;
- issuing necessary instructions to the Department for revising the returns in forms A and C keeping in view the changed circumstances and preparing a Departmental Manual wherein registers for keeping a proper watch on the levy and collection of ED and TOSE as well checks to be exercised are prescribed.

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- evolving a mechanism to monitor the data in Form A and Form C at field offices and headquarters to ensure correctness of ED and TOSE paid.
 - issuing instructions to clarify the grant of exemption from payment of TOSE by the Railways with respect to the relevant provision in the Act.
 - setting up an Internal Audit Wing in the Department; and
 - instituting a mechanism to ensure proper utilisation of money collected from the consumers for the specific purpose of Rural Electrification and Green Cess.

Other observation

B. Entertainments duty

Failure to take action for recovery of entertainments duty in 35 offices resulted in non-realisation of Government revenue aggregating ₹ 2.36 crore from 536 cable operators.

(Paragraph 6.4.1)

Registers maintained for recovery were not monitored which resulted in non-realisation of ₹ 2.26 crore from 59 permit rooms/beer bars.

(Paragraph 6.4.2)

Penal interest was not levied on the service providers for delays in payment of entertainment duty which resulted in non-realisation of ₹ 42.50 lakh in four cases.

(Paragraph 6.4.5)

C Education Cess and Employment Guarantee Cess

Penalty of ₹ 5.14 crore collected by the Municipal Corporation of Greater Mumbai on delayed payment of State education cess and employment guarantee cess was not remitted into the Government account.

(Paragraph 6.6.1)

State education cess and employment guarantee cess totalling to ₹ 315.65 crore were not remitted into the Government account by two Municipal Corporations.

(Paragraph 6.6.2)

CHAPTER VI: OTHER TAX RECEIPTS

6.1 Results of audit

We reported short levy, grant of excess refund, loss of revenue etc., amounting to ₹ 761.86 crore in 4,132 cases as mentioned below, on the basis of test check of the records relating to entertainment duty, electricity duty, state education cess, employment guarantee cess, tax on buildings (with larger residential premises), and profession tax conducted during the year 2012-13:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Performance audit on “Levy and collection of Electricity Duty, Tax on sale of Electricity and Inspection Fees”	1	188.31
2	Entertainment duty	1,520	7.99
3	Taxes and duties on Electricity	1,963	249.19
4	State Education Cess and Employment Guarantee Cess	92	314.81
5	Tax on buildings with larger residential premises	90	1.36
6	Profession tax	466	0.20
	Total	4,132	761.86

In response to our observations made in the local audit reports during the year 2012-13 as well as during earlier years, the concerned Departments accepted underassessment, short levy, etc. and recovered ₹ 116.32 crore in 1,826 cases of which 391 cases involving ₹ 1.23 crore related to 2012-13 and the rest to earlier years.

A performance audit on “Levy and collection of Electricity Duty, Tax on sale of Electricity and Inspection Fees” with total financial effect of ₹ 188.31 crore and a few audit observations involving ₹ 326.52 crore are included in the succeeding paragraphs.

SECTION A TAXES AND DUTIES ON ELECTRICITY

6.2 Performance Audit on "Levy and collection of Electricity Duty, Tax on sale of Electricity and Inspection Fees"

Highlights

Figures of arrears of ₹ 843.36 crore on account of Electricity Duty (ED)/Tax on Sale of Electricity (TOSE)/Inspection fees furnished/collected by the Department was deficient as it did not include the amount of ED and TOSE billed but not collected by the private companies/franchisees.

(Paragraph 6.2.8)

Absence of provisions in the Acts for remittance of the amount of proportionate ED and TOSE inherent in Delayed Payment Charges(DPC) and Interest on Arrears levied by private companies on delayed payments by consumers, resulted in undue benefit to the private companies by at least ₹ 24.98 crore at the cost of Government.

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In the office of the Electrical Inspector (EI) Mumbai Central, 66 *per cent* of the returns due were not received from the generating units concerned due to which correctness of ED paid were not monitored.

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Cross-linkage of identical data available in returns in Form 'A' and Form 'C' revealed variation in the units reported as sold/consumed, for levy of electricity duty and tax on sale of electricity to the extent of 639.95 crore and 68.12 crore, respectively, reflecting deficiency in monitoring.

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Interest was not levied on delayed payment of ED and TOSE aggregating ₹ 5,773.04 crore by MSEDCL, during the periods 2010-11 and 2011-12, which resulted in non-realisation of interest of ₹ 126.87 crore.

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Incorrect grant of exemption from payment of TOSE to Railways for utilisation of energy on its residential and commercial areas, though not envisaged in the Maharashtra Tax on Sale of Electricity Act, 1963 (MTSE Act), resulted in short realisation of tax of ₹ 1.55 crore.

(Paragraph 6.2.10.3)

Though inspections in respect of lifts and electrical installations, exist, it was not carried out or conducted regularly leading to shortfall in inspections.

(Paragraphs 6.2.9.5 and 6.2.10.4)

Details of utilisation of funds earmarked for Rural Electrification and Green Cess was not available with the Department.

(Paragraph 6.2.10.7)

6.2.1 Introduction

The Indian Electricity Act 2003¹ governs the laws relating to generation, transmission, distribution, trading, use of electricity, supply of electricity, etc. However, for levy and collection of Taxes and Duties on electricity supplied/sold to consumers, the Government of Maharashtra framed the Acts/rules. There are two private companies² and two public sector undertakings³ which have been granted distribution licences under Section 14 of the Indian Electricity Act, 2003 to supply electrical energy to the users/consumers. Electricity duty is levied at the rates specified by the Government from time to time on units of energy consumed by a user/consumer. In addition to this, tax on sale of electricity is also levied under Maharashtra Tax on Sale of Electricity Act, 1963. The primary objective of the Act is to generate revenue for creation of a fund for improvement of power supply in the State. The duty is also required to be paid by persons for captive consumption of energy generated by them.

As per the guidelines issued by the Maharashtra Energy Regulatory Commission (MERC), if the Electricity Bills are not paid by the consumer within the due date mentioned on the bill, the licensee shall charge a one-time penalty called Delayed Payment charges (DPC). The DPC is in addition to the interest charged on the arrears of the amount of electricity bill levied by the licensee. The rate of DPC is fixed as 2 *per cent* of the total electricity bill amount (including ED & TOSE) for that month /period.

The inspection of electrical installations and lifts are carried out in accordance with the provisions of Indian Electricity Act, 2003. The fees for such inspection and tests are determined by the State Government and shall be levied /payable in accordance with the rates fixed by the Government.

6.2.2 Organisational set up

The Chief Engineer (Electrical), Maharashtra (CE), who is the Head of the Department and is under the administrative control of the Secretary, Industries, Energy and Labour Department, is responsible for the administration of the Acts and Rules. He is assisted by four Superintending Engineers (SE), 38 Electrical Inspectors (EI), two Lifts Inspector (LI) at Mumbai and 78 Assistant Electrical Inspectors and 397 Sectional Engineers and Junior Engineers working under respective EI and LI.

¹ Framed by the Government of India.

² Tata Power and Reliance Infrastructure Ltd.

³ Maharashtra State Electricity Supply and Distribution Company Ltd. (MSEDCL), Brihan Mumbai Electricity Supply and Transport (BEST).

6.2.3 Scope of audit

The Performance Audit (PA) was conducted between September 2012 and March 2013 in the offices of the CE, Mumbai and 21 related Electrical Inspectors (EI) covering the periods from 2007-08 to 2011-12. However, figures for 2012-13 have been incorporated wherever available.

All the eight EIs dealing with collection of ED and TOSE and two EIs dealing with inspection of the lifts for whole of the State were selected. As regards inspection of electrical installations, 17 units were selected in accordance with Stratified Random Sampling Method on the basis of number of electrical installations in 36 EIs (Inspection). An Entry conference was held in September 2012 with the Deputy Secretary, Industries, Energy and Labour Department in which the objectives, scope and methodology of audit was explained to them. The draft report on the Performance Audit was forwarded to the Department/ Government in July 2013. The observations, conclusions and the recommendations made in the draft audit report were discussed in the Exit Conference held in July 2013. The Department has accepted most of the observations and their responses are appropriately included in respective audit paragraphs.

Reasons for selection of the topic

A PA on “Levy and collection of ED, tax and fees” was included in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2007. The same was discussed by the Public Accounts Committee (PAC) in October 2012. The Department was directed to take necessary action for rectifying the system and compliance deficiencies as pointed by audit. However, during our local inspections we found that cases relating to non-observance of the Act/ rules, non/short levy of the duty/tax etc as pointed out by audit persisted. Hence it was considered appropriate to conduct the PA.

6.2.4 Audit objectives

The PA was conducted with a view to:

- assess the efficiency and effectiveness of the system of levy and collection of duty, tax and interest;
- ascertain whether statutory inspections of lifts and electrical installations were being carried out and fees for inspections were being realised;
- whether the refund granted were in conformity with the provisions of the Act/Rules; and,
- ascertain whether monitoring and internal control at apex level exist to ensure proper realisation of duty, tax, interest and fees.

6.2.5 Audit criteria

The audit criteria for the Performance Audit are derived from the provisions of the following Central and State laws.

State Act/Rules

A. For Electricity Duty (ED)

1. Bombay Electricity Duty, Act, 1958. (BED Act)
2. Bombay Electricity Duty Rules, 1963 (BED Rules)

B. For Tax on Sale of Electricity (TOSE)

1. Maharashtra Tax on Sale of Electricity Act, 1963 (MTSE Act)
2. Maharashtra Tax on Sale of Electricity Rules, 1964 (MTSE Rules)

C. For Inspection of lifts

1. Bombay Lifts Act, 1939 (BL Act)
2. Bombay Lifts Rules, (BL Rules), 1958

Central Act/Rules

D. For inspection of electrical installations other than lifts

1. Indian Electricity Act, 2003 (IE Act)
2. Indian Electricity Rules 1956 (IE Rules)

In addition to the above, Resolutions of Government of Maharashtra issued from time to time were also referred to.

6.2.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Industries, Energy and Labour Department in providing necessary information and records for audit.

6.2.7 Trend of revenue

The Budget estimates, actual receipts and percentage of variation in respect of Taxes and Duties on Electricity for the period 2007-08 to 2012-13 are as under:

(₹ in crore)			
Year	Budget Estimates	Actual receipts	Percentage of variation of Col. 3 with col 2
1	2	3	4
2007-08	1,781.54	2,687.87	(+)50.87
2008-09	2,600.00	2,394.86	(-)7.89
2009-10	3,000.00	3,289.32	(+) 9.64
2010-11	3,800.00	4,730.26	(+)24.48
2011-12	4,400.00	4,831.09	(+)9.79
2012-13	4,809.93	5,895.68	(+)22.57

Source : Finance Accounts

The percentage of variation between the BE and actual receipts was higher in 2007-08 (51 per cent), 2010-11 (24 per cent) and 2012-13 (22 per cent). This was due to increase in the rates of TOSE in 2007-08, increase in rates of ED in 2010-11 and increase in generation and consumption of electricity resulting in increase in Government revenues in 2012-13.

6.2.8 Arrears of revenue

ED/TOSE

As per the information furnished by the Department, the amounts pending for recovery under ED and TOSE from various power generators as on 31 March 2013, were as follows:

(₹ in crore)

Particulars	Principal (ED & TOSE)	Interest on ED & TOSE	Total of Principal and Interest
Sugar factories	4.04	20.40	24.44
Captive Power	107.53	260.46	367.99
Wind power	89.28	339.45	428.73
Total	200.85	620.31	821.16

The above arrears are on account of the energy units supplied by sugar factories/wind power mills which generate the electricity for captive consumption or for sale. Of these, ₹ 355.75 crore were locked up in court cases and for ₹ 11.37 crore Revenue Recovery Certificates have been issued.

The public sector undertakings remit all the dues based on the bills generated during a month and as such there are no arrears. The private companies and the franchisee remit the duty after collecting it from the consumers. Thus, the ED and TOSE receivable from consumers who do not pay the energy bills remained in arrears. The Department has not developed any system to ascertain the arrears pending collection. These are discussed in the subsequent paragraphs.

Inspection fee of electrical installations

Our scrutiny of records revealed that an amount of ₹ 22.19 crore was outstanding on account of arrears of inspections fees from 1999-00 to 2012-13 as shown below:

Years	No. of customers	Arrears of inspection fees (₹ in lakh)
1	2	3
1999-00	19	0.26
2000-01	1	0.50
2001-02	2	0.25
2002-03	12	0.56
2003-04	68	1.21
2004-05	1,515	2.81
2005-06	2,383	3.64
2006-07	5,090	3.80
2007-08	5,280	7.87
2008-09	4,700	12.34
2009-10	1,533	68.79
2010-11	4,611	199.00
2011-12	14,874	679.68
2012-13	1,33,630	1,239.21
Total	1,73,718	2,219.92

The Department stated that the levy of fee for inspection of electrical installations was discontinued from January 2013.

The Department may take prompt action to recover the arrears as recovery will become more difficult with the passage of time.

Audit findings

We noticed a number of system and compliance deficiencies as mentioned below:

6.2.9 System deficiencies

6.2.9.1 Undue benefit to private companies due to lack of uniformity in remittance of Government dues

There are four licencees authorized to supply electricity in the State. Of these, two are private licencees viz. Tata Power and Reliance Infrastructure and two are public sector undertakings viz. MSEDCL and BEST. In Nagpur area, MSEDCL has entrusted the distribution of electricity to its franchisee M/s. Spanco Nagpur Discom Ltd. (SNDL), which is also a private company.

We noticed that two different methods were being followed for remittance of Government dues into the Government account, one by the public sector undertakings and other by the private licencees. These are discussed as follows.

Method adopted by the public sector undertakings: The undertakings remit the Government dues based on the bills issued to the consumers regardless of the fact whether the payments are received from the consumers or not. Delayed payments by the undertakings are liable for interest as per the provisions of the Act.

Method adopted by private companies/franchisee: The private companies/franchisee remit the amount of ED and TOSE collected from the consumers during a month, into the Government account. Thus, in case the consumer delayed or did not pay the billed amount, the remittance of the Government dues into the Government account also got delayed or remained unrecovered. For non-payment of billed amount in time by the consumers, the MERC allowed the licencees to collect one time extra charges at the rate of two *per cent* of the billed amount called Delayed Payment Charges (DPC) and also collect Interest on Arrears (IOA) on the billed amount at rates ranging from 12 to 18 *per cent*. The private licencees retained the entire amount of DPC and IOA collected by them and no portion thereof was remitted into the Government account. As the electricity bills include ED and TOSE which is remitted to the Government, the DPC and IOA is levied on these items also on which these private companies have no claim. However, there is no provision in the BED Act as well as the MTSE Act for remission of proportional DPC and IOA levied on ED and TOSE, into the Government account.

We noticed that the Department had not examined the billing procedure of the private companies due to which no data was available relating to DPC/IOA collected by the private licencees. After we requisitioned the same, the data was obtained and made available to us.

Delayed Payment Charges: Analysis of data furnished by the Department revealed that the private companies and the franchisee had charged DPC amounting to ₹ 312.71 crore from the consumers. The DPC recovered and retained by the companies on the ED element worked out to ₹ 20.33 crore for the periods during the periods 2007-08 to 2011-12 as detailed below:

(₹ in crore)

Year	Delayed payment charges billed			Total	Minimum rate of electricity duty (%)	DPC on the ED component
	Tata Power	SNDL	Reliance Infra-structure			
2007-08	32.63	0	19.71	52.34	6	2.96
2008-09	15.21	0	23.24	38.45	6	2.18
2009-10	95.59	0	25.23	120.82	6	6.84
2010-11	32.65	0	21.08	53.73	9	4.44
2011-12	15.13	3.31	28.93	47.37	9	3.91
Total	191.21	3.31	118.19	312.71		20.33

(Data for the year 2012-13 not available)

Interest on Arrears: Analysis of data received from Reliance Infrastructure and SNDL revealed that they had charged IOA amounting to ₹ 63.85 crore from the consumers which includes IOA on ED component amounting to

₹ 4.65 crore (calculated on the basis of minimum rate of ED leviable during the period).

(₹ in crore)

Year	Interest on arrears			Minimum rate of electricity duty (%)	IOA on the ED component
	Reliance Infrastructure	SNDL	Total		
2007-08	6.01	0	6.01	6	0.34
2008-09	6.81	0	6.81	6	0.39
2009-10	11.27	0	11.27	6	0.64
2010-11	17.68	0	17.68	9	1.46
2011-12	19.71	2.37	22.08	9	1.82
Total	61.48	2.37	63.85		4.65

(Data for the year 2012-13 not available)

In the absence of specific mechanism to calculate TOSE component inherent in the DPC and IOA, the same could not be quantified.

The Department intimated that the DPC or IOA is the subject matter of MERC which is an independent commission set-up by the Government of Maharashtra to decide the tariffs of the licencees. It further stated that Section 4 of the BED Act requires the licencees to remit into the Government only that amount which has been collected by the licencees due to which it would be incorrect to recover the ED inherent in DPC and IOA.

However, the fact remains that the Department has not prescribed a uniform method for remittance of Government dues and the licencees are adopting two different methods in recovering the Government dues from the consumers, one by the public sector undertakings and other by the private companies. There is no provision in the BED Act as well as the MTSE Act for remitting proportional DPC and IOA levied on ED and TOSE into the Government account, thus resulting in undue benefit of the private companies at the cost of Government.

The Government may consider introducing a provision in both the Acts or issuing necessary executive orders, as the case may be, such that, the private licencees/franchisees pay to the Government the proportionate amount of DPC and IOA collected by them on the element of ED and TOSE included in the electricity bills.

6.2.9.2 Deficiencies noticed in the monitoring mechanism of recovery of Government dues

We found that the Department has not framed a manual for the benefit of the staff in carrying out various functions with respect to the Acts/Rules/Departmental instructions. As such, the registers required to be maintained and the returns prescribed under the Act/Rules could not be monitored. A few instances are mentioned as below.

(a) Non-updation of returns in Form A:- Form A is an return prescribed under Rule 4(c) of the MTSE Rules showing the sale of energy made by the

bulk licensee and the tax payable by him during a quarter. The return is to be submitted before the 10th day of the second month succeeding the quarter to which the return relates. This return was prescribed in 1964, thereafter in 2002 privatisation took place in power supply sector.

The return in Form A submitted by private licensees contains all the information like total units distributed, supplies to Central Government units, residential units, streetlights, Green Cess payable, supplies to commercial units, industrial units etc., while that submitted by the public sector undertakings in the format prescribed under the Act does not contain such detailed information. The format of the form as prescribed under the Act has now become obsolete as at that time it was limited to only bulk supplies to industrial and commercial units.

(b) Non-updation of Form C: The Form C is a return prescribed under the BED Act did not contain the column for consumption charges on which ED is levied. MSEDCL submits its return relating to energy supply and charge thereon etc. to the EIs in this form. We found that only EI, Thane had mentioned consumption charges separately in the Form C. However, the correctness of the ED was not verified by either the EI Thane or CE. Our scrutiny of the consolidated returns submitted by the EI Thane indicated short remittance/recovery of ED to the extent of ₹ 570.44 crore for the periods 2009-10 and 2010-11 on account of wrongful computation of ED on consumption charges as detailed in the **Appendix XI**.

After we pointed out this matter, the Department stated that the form relating to the consumption charges will be introduced in upcoming C returns. It further stated that EI Thane had wrongly compiled the consumption charge for the year 2010-11 due to which the discrepancies as pointed out by audit had occurred. The correct figures had now been obtained and the assessment had been rechecked and no shortfall was found. For the year 2009-10, necessary verification would be carried out.

The reply of the Department was again verified in August 2013 in respect of 348 returns pertaining to 87 billing centres/circles. We noticed that as against ED payable as per returns of ₹ 1,157.31 crore during 2010-11, the amount of ED actually paid was ₹ 865.78 crore, thus resulting in difference of ED paid to the extent of ₹ 291.53 crore.

The above facts indicate that returns in Form C were not being scrutinised and reconciliation of the accounts with the Form C was not done.

(c) Non-scrutiny of returns relating to TOSE by the EIs and CE:

(i) No register was prescribed by the Department for recording the details of levy and collection of TOSE. We found discrepancies in payment of TOSE in the returns submitted by the MSEDCL and the amounts actually paid by the MSEDCL in three circles under EI, Aurangabad as follows:

(₹ in lakh)

Name of Circle office	Period	No. of units of energy sold to consumers as per return	TOSE payable @ 8 paise/ unit	TOSE actually paid	Variation (Col. 4 – Col 5)
1	2	3	4	5	6
Jalna	2010-11	95,57,82,652	764.63	717.04	47.59
Nanded	2009-10	13,36,56,805	106.93	106.36	0.57
Beed	2009-10	12,46,27,023	99.70	86.00	13.70
Total		1,21,40,66,480	971.26	909.40	61.86

(ii) In EI, Nagpur, there was a difference of ₹ 8.45 lakh in the actual tax receipts and actual payments made in the month of January 2012. Due to absence of prescribed registers, the difference could not be readily explained by the Department. Later on it was stated that the same was due to the adjustment of the amounts of the previous months.

(iii) Similarly, in Pune for the month of September 2011, the total tax payable as per Form A was ₹ 10.02 crore, whereas the licensee viz. MSEDCL had remitted only ₹ 8.7 crore. Reasons for short recovery of tax of ₹ 1.32 crore was not explained. The Department stated that the figures would be reconciled. A report on the reconciliation is awaited (January 2014).

(d) Non-scrutiny of returns relating to ED by the EIs and CE

(i) We found that the ED payable as per C returns in three Divisions, (Kolhapur, Pune and Thane) was ₹ 761.75 crore while the annual statement submitted by MSEDCL to the CE indicated that only ₹ 744.55 crore were remitted into the Government account. Thus, there was a difference of amount of ED paid to the extent of ₹ 17.20 crore as given in **Appendix XII**. The above facts indicate that the figures are not being reconciled by the Department with the MSEDCL.

After this was pointed out, the EIs accepted the observation and stated that necessary action would be taken to recover the amount.

(ii) We noticed that the rates for computation of the electricity duty payable for residential and commercial consumers were not applied correctly in the returns submitted by MSEDCL (Satara Circle, Satara Rural Division and Satara Khatau Division) resulting in wrongful computation and differential amount of ED recoverable at ₹ 12.58 lakh as detailed in **Appendix XIII**.

After this was pointed out, the EI, Pune stated (December 2012) that the matter would be verified and necessary action would be taken. However, the CE later on stated that they had incorrectly depicted the consumption charges in their returns and had found no discrepancies. The above facts indicate that the returns filed by the MSEDCL were not being scrutinised by the Department and the chances of non/short collection of ED could not be ruled out.

(e) Non- monitoring of returns in Form B

Under the provisions of Rule 4(3) (iii) of the BED Rules, every person other than a licensee who intends to generate, or intends to continue generation of energy exclusively for own use shall submit a quarterly return in Form-B showing the units of energy generated and the ED payable thereon to the EI on or before 15th day of the next month following the quarter to which the return relates.

We noticed that the Department had not kept proper watch on the receipt of the returns in Form 'B' submitted by such licensees. EI Thane and Pune did not furnish the returns for the months of November and December 2012 to audit. Further, our scrutiny in the office of the EI Mumbai Central, for the periods 2007-08 to 2011-12, revealed that as against 5,199 returns to be submitted, the energy generating units had submitted only 1,763 returns resulting in shortfall of 3,436 returns as shown below:

Year	Total no. of B returns due for submission	Total no. of B returns actually submitted	Short fall
2007-08	763	304	459
2008-09	927	347	580
2009-10	1,064	421	643
2010-11	1,146	413	733
2011-12	1,299	278	1,021
Total	5,199	1,763	3,436

(Data for the year 2012-13 not available)

After the above facts being brought to the notice, the EIs stated that the returns would be called for. Information in this regard has still not been received (January 2014).

The above observations from (a) to (e) were reflective of weakness in the internal control measures with respect to maintenance of registers for keeping proper watch on the returns to be submitted by the licensees and exercising checks on the returns to ascertain the correctness of ED and TOSE paid by them.

The Government may issue necessary instructions to the Department for revising the returns in forms A and C, keeping in view the changed circumstances and preparing a Departmental Manual wherein registers for keeping a proper watch on the levy and collection of ED and TOSE as well checks to be exercised are prescribed.

6.2.9.3 Variation in units consumed/sold as per Forms 'C' and 'A'

The records of MSEDCL are computerized. However, the returns furnished by it are prepared manually. We found that there was no linkage between the two returns (Form A under MTSE Act and Form C under BED Act) furnished by MSEDCL. We compared the total number of units under industrial and

commercial categories for the periods⁴ 2009-10, 2010-11 and 2011-12 in Form A with those shown in Form C (including exempted units) and found that these were at variance as mentioned in the following paragraphs:

(a) TOSE units more than ED units:

Detailed scrutiny of the consolidated statement of returns for the year 2009-10 in the office of the CE revealed that in the returns submitted by the following offices, the number of units for industrial and commercial categories on which TOSE was levied as mentioned in return in Form A was more than number of similar units, irrespective of whether they were subject to levy of ED or exempt therefrom, as mentioned in Form C as follows:

(Units in crores)

Name of officer submitting the returns	Period	Units of energy in Form A for TOSE	Units of energy in Form C for ED including exempted units	Difference Col. 3 – Col 4
1	2	3	4	5
EI Nashik	2009-10	338.10	247.50	90.60
EI Pune	2009-10	591.73	385.39	206.34
EI Amravati	2009-10	79.07	67.60	11.47
EI Thane	2009-10	1,260.42	1,202.08	58.34
EI Nagpur	2009-10	374.26	146.98	227.28
EI Aurangabad	2009-10	274.21	236.55	37.66
Total		2,917.79	2,286.10	631.69

Our scrutiny of records in the offices of the EI Aurangabad, Nashik and Pune further revealed that the number of units of energy sold to commercial and industrial consumers as per Form A was more than the number of units consumed by the same class of consumers as per Form C returns. The details are shown in the following table:

(Units in crores)

Name of EI	Period	Units shown in Form 'A'	Units in Form 'C' excluding residential class of consumers	Variation in units
EI Aurangabad	2010-11	4.23	3.64	0.59
EI Nashik	2009-10	255.23	247.67	7.56
EI Pune	07/2007 to 09/2010	1.43	1.32	0.11
Total				8.26

It can also be seen from the above two tables that, for the year 2009-10, the figures submitted by EI Nashik to the CE was different from the figures in the returns available with him for the same period.

⁴ The returns for the periods 2007-08 to 2008-09 were not found on record nor were they produced to audit despite being called for.

(b) ED units more than TOSE units

In the following offices, the units for industrial and commercial categories on which TOSE was charged as mentioned in return in Form A was less than the units irrespective of whether they were subject to levy of ED or exempt therefrom, as mentioned in Form C as follows:

(Units in crores)

Name of EI	Period	Total units for ED as per Form 'C'	Total units shown in Form 'A'	Variation in units
EI Nashik	2010-11 to 2011-12	835.93	768.26	67.67
EI, Pune (five sub divisions)	2009-10 to 2011-12	2.91	2.46	0.45
Total				68.12

Thus, it could be seen from the above that though the source of information for the above two returns was same, there was variation in figures in the two different returns generated from it, indicating that either the figures are incorrect or the returns have been generated incorrectly. This could have been avoided had a proper link developed between the two returns.

In the exit conference the Department stated that these are two sets of figures under two different Acts. As such these may not tally.

The reply of the Department is not tenable as the figures of units of energy supplied by the licensee are from the same source data and are the basis for the calculation of TOSE and consumption charges on which ED is levied.

From the above it appears that the Department was not compiling the returns and also not correlating the figures in the two returns so as to ensure that the data furnished is correct and there is no loss of revenue.

The Government may evolve a mechanism to monitor the data in Form A and Form C at field offices and headquarters to ensure correctness of ED and TOSE paid.

6.2.9.4 Short realisation of ED from Aarey colony

Reliance Infrastructure Ltd. supplies power to a bulk consumer called Aarey Colony at a metering point. From the metering point the energy is supplied to consumers through sub-meters. Aarey Colony submits returns in Form C directly to EI, Mumbai Central and remits the ED directly into the Government Account. The consumption charges are directly paid to the Reliance Infrastructure Ltd. Further, ED is also leviable on fuel adjustment charges (FAC) levied by the supplier.

Our scrutiny of records revealed that M/s Reliance Infrastructure Ltd. had supplied 268.57 lakh units of electricity to Aarey Colony for the periods from 2008-09 to 2012-13 and had recovered the consumption charges accordingly. However, we noticed that Aarey Colony had remitted ED in respect of 248.94 lakh units only. Thus, ED of ₹ 8.59 lakh was not paid on 19.63 lakh units as detailed in **Appendix XIV**.

We also noticed that Aarey Colony had not paid ED on FAC paid by it to the Reliance Infrastructure Ltd, for the periods from 2008-09 to 2011-12 (however the same was paid during 2012-13). The ED payable on FAC worked out to ₹ 18.81 lakh as detailed as follows

Period	Months	FAC paid	Rate of ED	Electric duty payable (₹)
2008-09	April 2008 to March 2009	1,76,349	12.00%	21,162
		49,25,573	13.00%	6,40,324
2009-10	April 2009 to December 2009	60,122	12.00%	7,215
		20,04,278	13.00%	2,60,556
	January 2010 to March 2010	31,266	15.00%	4,690
		9,45,289	17.00%	1,60,699
2010-11	April 2010 to January 2011	57,034	15.00%	8,555
		14,68,294	17.00%	2,49,610
	February 2011 to March 2011	38,794	15.00%	5,819
		4,56,995	17.00%	77,689
2011-12	April 2011 to March 2012	1,65,512	15.00%	24,827
		24,68,018	17.00%	4,19,563
Total				18,80,709

Absence of a system to correlate the data of units of energy supplied with units on which ED is paid resulted in short realisation of ED of ₹ 27.40 lakh.

In the exit conference the Department accepted the audit observation and stated that demand notice would be issued in this regard.

6.2.9.5 Lack of provisions for inspection of escalators

An escalator is a moving staircase or a conveyor transport device for carrying people between floors of buildings such as shopping malls.

There is provision for issue of licence for installation of lift and also the same is to be inspected twice in a year as per provision of the BL Act. However, there is no provision in respect of issue of licence and periodical inspection by the Department in respect of escalators though they are very much susceptible to accidents in absence of fixation of safety norms by the Department. It is pertinent to mention here that other states like Gujarat, Kerala, Assam and West Bengal have specific Acts to issue licences for installation of escalators and to carry out periodical inspections thereof. Further, the Department also did not have data relating to installed escalators and number of accidents which have occurred therefrom.

In the exit conference, the Department stated that a proposal regarding taking up of inspection of escalators has been sent to the Government.

6.2.10 Compliance deficiencies

6.2.10.1 Non-levy of interest on delayed remittances of ED and TOSE into Government account

Under the provisions of Section 4 of the BED Act and Section 3 and 4 of the MTSE Act, every licensee who supplies electricity to consumers is required to collect ED and TOSE from the consumer and pay it to the State Government on or before the last date of the succeeding calendar month in which the bills are raised. Further, as per section of 8 of the BED Act and Section 9 of the MTSE Act, in case of default interest at the rate of 18 *per cent* per annum for the first three months and 24 *per cent* per annum thereafter is chargeable on the amount of duty remaining unpaid till the date of payment.

We noticed that the MSEDCL had made payments of ED and TOSE amounting to ₹ 5,773.04 crore with delays ranging from one to 118 days during the periods 2010-11 and 2011-12. However, the Department failed to levy interest as required under the provision of the Act, resulting in non-recovery of interest amounting to ₹ 126.87 crore (ED-₹ 114.62 crore + TOSE-₹ 12.25 crore).

In the exit conference, the Department stated that a proposal to adjust the dues against the subsidies payable to MSEDCL was under consideration by the Government. However, the fact remains that the amount due to the Government is required to be remitted into the Government account and interest for delayed remittance is also leviable as per the relevant provisions of the Acts.

6.2.10.2 Non-levy of interest due to short fixation of installments for payment of ED

Rule 3(3) of the BED Rules stipulates that a licensee may opt for payment of ED into the Government account in respect of energy consumed by the consumers during a billing month in three installments. The first two installments are to be paid by the licensee equivalent to 1/24th of the total ED collected and paid during the preceding year on the 15th and 30th of the month, and the balance amount is required to be paid by the 10th of the succeeding month.

We found that BEST had opted to pay ED under Rule 3(3) but while remitting the money it made short payments in respect of first two instalments and delayed the payment of the third and final installment by two to 25 days. On the short and delayed payment of ED, interest was leviable under the relevant provision of the Act. But no action was taken by the Department in this regard due to non-verification of the returns filed by the BEST. Same worked out to ₹ 59.62 crore, for the periods 2009-10 to 2012-13. A few instances are highlighted below.

Sl. No	Billing month/ Instalment no	Amount payable (₹ in crore)	Due date of instalment	Amount paid (₹ in crore)	Amount paid short (₹ in crore)	Actual date of payment	Duration of delay in days	Interest leviable (₹ in lakh)
1	April 2011/First	16.92	15 May 2011	4.44	12.48	9 June 2011	25	1,558.99
2	May 2011/First	16.92	15 June 2011	10.44	6.48	29 June 2011	14	452.99
3	July 2011/First	16.92	15 August 2011	15.17	1.75	9 September 2011	25	218.06
4	September 2011/ First	16.92	15 October 2011	14.73	2.19	9 November 2011	25	273.29
5	November 2011/ First	16.92	15 December 2011	14.29	2.63	9 January 2012	25	328.28
6	February 2012/ First	16.92	15 March 2012	11.35	5.57	30 March 2012	15	417.26
7	March 2012/ First	16.92	15 April 2012	7.84	9.08	27 April 2012	12	544.60

In the exit conference the Department accepted the observation. However, steps taken to recover the amount have not been intimated (January 2014).

6.2.10.3 Non-levy/recovery of TOSE for the energy supplied and used for residential and commercial purpose by Central and Western Railway

Under section 7(b) of the MTSE Act, exemption of TOSE has been provided only to the electricity consumed by or sold to the Central Government and Indian Railways in connection with construction, operation or maintenance of Railways. No such exemption is admissible for supply of energy for residential or commercial purposes.

Scrutiny of 'C' returns submitted by the Assistant Divisional Engineer (Power), Western Railway, Mumbai Central and Senior Divisional Electric Engineer (G) Central Railway, Chhatrapati Shivaji Terminus Mumbai to the Electrical Inspector, Mumbai Central revealed that the Western Railway and the Central Railway had paid ED on 4.58 crore units of electrical energy consumed in connection with residential and commercial purposes during the period from 2007-08 to 2012-13⁵. However, the Railways had not paid TOSE for such consumption of electrical energy for residential and commercial purposes. The Department had also not worked out the amount of TOSE leviable and demanded the same from the railways. The TOSE recoverable is at ₹ 80.95 lakh and interest thereon is ₹ 73.90 lakh aggregating ₹ 1.55 crore.

After we pointed out these cases, EI, Mumbai Central stated (October 2012) that levy of TOSE would not be correct in view of the exemption granted to the Railways under Section 7(b) of MTSE Act.

⁵ C returns for 2012-13 were not furnished by the Central Railway.

The reply is not tenable in view of Section 7(b) which provides for exemption from levy of TOSE only for official use of the Railways and not for commercial and residential use.

The Government may consider issuing instructions to clarify the grant of exemption from payment of TOSE by the Railways with respect to the relevant provision in the Act.

6.2.10.4 Non-inspection of lifts and electrical installations

(a) Non-inspection of lifts

There are two Electrical Inspector (Lifts) Division-I and II functioning under the jurisdiction of CE, Mumbai in the Maharashtra State.

Under section 11 A of the BL Act read with Rule 9A of the BL Rules, every lift shall be inspected at least once in six months by an officer authorized in this behalf by State Government. An annual fee for the inspection of lifts shall be paid either prior to inspection or within ten days from the date of inspection at such rate as may be prescribed by the Government.

Information furnished by the Electrical Inspector (Lift, Division-I and II), Mumbai for the periods 2007-08 to 2012-13 revealed that more than 65 *per cent* of the lifts remained uninspected prior to 2011-12 as detailed below.

Year	Total nos. of lifts to be inspected	Total no. of lifts inspected during the year	No. of lifts remained un-inspected during the year	Minimum inspection fee	Amount of Inspection Fee not recovered due to non-inspection (₹ in crore)	Percentage of lifts remained un-inspected during the year (Col 4 to Col 2)
1	2	3	4	5	6	7
2007-08	71,742	21,939	49,803	300	1.49	69
2008-09	78,550	22,813	55,737	300	1.67	71
2009-10	78,944	13,375	65,569	600	3.93	83
2010-11	86,411	30,247	56,164	600	3.37	65
2011-12	85,440	22,080	63,360	600	3.80	74
2012-13	93,470	81,480	11,990	600	0.72	13
Total					14.98	

However, during 2012-13, the Department had improved the situation with only 13 *per cent* of the lifts remaining uninspected. However, on account of non-inspection, the Government has been deprived of a minimum revenue of ₹ 14.98 crore during the past six years.

(b) Non-inspection of electrical installations

Under rule 46 of IE Rules, to ensure public safety, installations for supply of electricity are to be periodically inspected at intervals not exceeding five years, either by the inspectors or by the suppliers as may be directed by the State Government. The minimum fee was ₹ 20 per inspection which was

raised to ₹ 400 from April 2010. Under rule 46(2)(B), the supply of electricity to the installation is liable to be disconnected on non-payment of inspection fees.

Our scrutiny of the records in the office of the CE, Mumbai revealed that out of 49,46,349 electrical installations required to be inspected, only 28,57,032 were inspected by the Department during the period 2007-08 to 2012-13, as detailed in the following table:

Year	Inspections to be carried out	Inspections actually carried out	Arrears in inspection
2007-08	10,11,772	6,33,722	3,78,050
2008-09	10,26,440	3,65,992	6,60,448
2009-10	10,78,617	5,75,933	5,02,684
2010-11	7,43,369	4,52,317	2,91,052
2011-12	4,97,288	3,36,442	1,60,846
2012-13	5,88,863	4,92,626	96,237
Total	49,46,349	28,57,032	20,89,317

Failure to inspect lifts and other electrical installations compromised public safety. It is pertinent to mention here that there have been 46 (including 13 fatal) accidents relating to lifts and 14,973 (including 11,478 fatal) accidents relating to electrical installations during the past six years.

In the exit conference, the Department stated that additional staff has now been appointed by the Government to carry out inspection. However, further progress made to carry out the inspections of lifts and electrical installations has not been received (January 2014).

6.2.10.5 Non-reconciliation of Government receipts with Treasury records

Under Rule 98(2) (V) of Maharashtra Treasury Rule, 1968 the officer who collects the money on behalf of Government is required to prepare a statement of the amount credited by him into the Government Treasury and get the same verified with the records of the Treasury officers and obtain a certificate to the effect that amount credited is found correct and keep the same on record.

Scrutiny of records/reconciliation statements of EIs at Mumbai Central, Amravati and Pune revealed that the amounts credited into the Treasury during various periods from December 2011 to November 2012 were pending reconciliation with records of the treasury concerned, as detailed below:

Sl. No.	Name of the Office	Period for which reconciliation was pending
1	Electrical Inspector (Duty), Mumbai Central	December 2011 to September 2012
2	Electrical Inspector, Pune	October 2012 and November 2012
3	Electrical Inspector (Duty), Amravati	April 2012 to November 2012

It may be mentioned here that non-reconciliation has implications relating to misclassification and non-detection of frauds, hence reconciliation is essential.

On this being brought to notice, the EIs stated (October 2012 and December 2012) that the reconciliation would be carried out.

6.2.10.6 Internal Audit

The internal audit wing (IAW) of an organisation is a vital component of its internal control mechanism and is generally defined as the control of all controls to enable the organisation to assure itself that the prescribed systems are functioning reasonably well. A recommendation in this regard was also made in Paragraph 5.2.10 of the Report of the Comptroller and Auditor General of India on the Revenue Receipts - Government of Maharashtra for the year ended 31 March 2007. However, it was noticed that no IAW was in existence in the Department, leaving it vulnerable to the risk of control failure.

After this was brought to the notice, the Department stated (October 2012) that proposal for setting up an internal audit wing would be sent to the Government.

The Government may consider setting up an Internal Audit Wing in the Department.

6.2.10.7 Utilisation of Electricity Fund and Green Cess Fund

Section 5 of MTSE Act states that

- 1 the proceeds of tax (together with in interest payable under section 9) recovered under this act, shall first be credited to the Consolidated fund of state, and under appropriation duly made by law in this behalf,
 - a) An amount of tax equivalent to 4 paise per units paid by power utility to the State Government in respect of sale of electricity to commercial and industrial consumer shall be transferred to the Maharashtra Energy Development Agency (MEDA), established under the Societies Registration Act, 1860 or in successor, for executing schemes of generation of renewable and non-conventional sources of energy, and
 - b) The remaining amount be entered in and transferred to a separate fund called the State Electricity Fund (SEF).
- 2 Any amount transferred to MEDA and the SEF under sub section (1) shall be charged on the Consolidated Fund of the State.

Further, as per section 5A of MTSE Act the fund may be expended for executing schemes for development and improvement of power supply in the State for operating Rural Electrification Schemes (RES) therein and in furtherance of this purpose, the State Government shall from and out of the fund give subsidies or loans or ways and means advances to power utility and the Board.

With effect from 6 April 2004, an amount equivalent to four paise per unit (revised to eight paise per unit from May 2008) of TOSE collected⁶ was required to be transferred to the MEDA for executing schemes of generation of renewable and non-conventional sources of energy (“Harit Urja Programme”). The fund was popularly known as “Green Cess”.

In January 2006, the Government established a Fund called “Urja Ankur Nidhi” for the purpose of speedy financial assistance and for rapid development of non-conventional sources of energy through public private partnership. The initial investment in the Fund was ₹ 418 crore, out of which ₹ 218 crore was to be invested by Government of Maharashtra through MEDA by appropriation of the Green Cess and balance ₹ 200 crore was to be committed by an investment manager through the private sector.

As per the information furnished by the Department, out of the total amount of ₹ 1,809.82 crore collected for the periods 2007-08 to 2012-13 on account of Green Cess only ₹ 45.90 crore was transferred to MEDA that too in the year 2011-12, details of which are as follows:

(₹ in crore)

Year	Amount of Green Cess collected	Amount transferred till date to MEDA
2007-08	204.96	0.00
2008-09	257.07	0.00
2009-10	214.26	0.00
2010-11	374.57	0.00
2011-12	378.42	45.90
2012-13	380.54	0.00
Total	1,809.82	45.90

Thus, less than three *per cent* of the Green Cess had been transferred by the Department to MEDA for Harit Urja Programme and Ankur Urja Nidhi. In order to ascertain whether the funds were utilised for the purpose for which it was meant or not, details of utilisation of funds collected for SEF and Green Cess were called for. In reply, the Department expressed their inability to produce the same as the records were destroyed in the fire at Mantralaya in June 2012.

In the exit conference, the Department stated that action would be taken to release the funds to MEDA for proper utilization.

The Government may institute a mechanism to ensure proper utilisation of money collected from the consumers for the specific purpose of Rural Electrification and Green Cess.

⁶ From commercial, industrial and residential in Greater Mumbai and from commercial and industrial in other areas.

6.2.11 Conclusion

We noticed that-

- the Department did not effectively monitor the receipt of the A and C returns and verify the correctness of duty and taxes payable as per return and actual payment statement of the licensee;
- there was no system of reconciliation of figures relating to A and C returns regarding units consumed, amount payable, and paid in the returns available at EI and at apex level;
- the Department was not compiling the returns at CE level leading to possible short recovery of duty and taxes;
- absence of clear provision in the BED Act regarding the remittance of the ED component inherent in the DPC and IOA resulted in undue enrichment to the licensees;
- the Department did not levy TOSE for sale of electricity to Railways for residential and commercial purposes even though it was recovering ED on the same;
- failure of the Department to carry out inspection of lifts/electrical installations compromised public safety;
- Internal Audit wing was not in existence in the Department;
- Escalators were not being considered for inspections for ensuring public safety; and,
- Details regarding utilisation of SEF were not readily available and only a part of funds meant for “Harit Urja” programme was transferred to the implementing agency.

6.2.12 Recommendations

The Government may consider-

- introducing a provision in both the Acts or issuing necessary executive orders, as the case may be, such that, the private licensees/franchisees pay to the Government the proportionate amount of DPC and IOA collected by them on the element of ED and TOSE included in the electricity bills;
- issuing necessary instructions to the Department for revising the returns in forms A and C keeping in view the changed circumstances and preparing a Departmental Manual wherein registers for keeping a proper watch on the levy and collection of ED and TOSE as well checks to be exercised are prescribed.
- evolving a mechanism to monitor the data in Form A and Form C at field offices and headquarters to ensure correctness of ED and TOSE paid.

- issuing instructions to clarify the grant of exemption from payment of TOSE by the Railways with respect to the relevant provision in the Act.
- setting up an Internal Audit Wing in the Department; and
- instituting a mechanism to ensure proper utilisation of money collected from the consumers for the specific purpose of Rural Electrification and Green Cess.

SECTION B ENTERTAINMENTS DUTY

6.3 Audit observations

During scrutiny of records in the offices of the Dy. Collectors(DCs)/Resident Deputy Collectors(RDCs)/Taluka Magistrates(TMs)/Entertainment Duty Officers(EDOs), we noticed cases of non-observance of provisions of the Acts and Rules as mentioned in the succeeding paragraphs in this section. These cases are illustrative and are based on a test check carried out by us. The Government may evolve a suitable mechanism so that mistakes can be avoided, detected and corrected.

6.4 Non-observance of provisions of the Acts/Rules

The Bombay Entertainments Duty Act, 1923 (BED Act), provides for –

(i) levy and collection of entertainment duty (Ent. D) from entertainment providers

(ii) levy of interest in cases of non/late remittance

We noticed that the concerned authorities did not observe some of the provisions of the BED Act in cases mentioned in the succeeding paragraphs 6.4.1 to 6.4.6.

6.4.1 Non/short recovery of Ent.D from cable operators

Under section 3(4) of the BED Act, Ent.D was payable by the cable operators at flat rate of ₹ 45, ₹ 30 or ₹ 15 per television set per month with effect from June 2006 depending on whether the area is a Municipal Corporation (MC), 'A' and 'B' class municipality or other area. Under Rule 14 of the Collection of Ent.D on Cable Television (including Ent.D leviable on DTH Broadcasting Services) by way of Public Auction Rules 2003, the Collector is required to assess the cable operators and recover the Ent.D. These cable operators are required to file monthly returns in Form 'E' along with the payment of Ent.D with the Collector. As per Section 4B(4) of the BED Act, if the return is not filed within the prescribed time, the State Government may, after giving the cable operator a reasonable time, assess to the best of its judgment, the Ent.D due from the cable operators and also direct them to pay the Ent.D and penalty, if any. Failure of compliance to the provisions of Section 4B is punishable under Section 5A by imprisonment for a term extending up to six months or fine not more than ₹ 5,000 or both. As per Section 9B of the BED Act, interest at the rate of 18 per cent per annum for the first 30 days and 24 per cent per annum thereafter is also to be levied in case of default in payment.

Mention was made in Paragraph 7.3.1 of the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the period ending 31 March 2011, about non-payment of Ent.D by cable operators. The Government had stated that all Divisional Commissioners had been instructed for recovery of Ent.D and also to initiate action to institute a mechanism to ensure that recoveries are effected. However, the position of recovery of Ent.D continued to remain low as follows.

During test check of Recovery Register of 35 offices (eight⁷ DCs, eight⁸ RDCs, four⁹ Ent.DOs and 15¹⁰ TMs) between February 2011 and January 2013, we noticed that Ent.D amounting to ₹ 2.36 crore was not paid by 536 cable operators during various periods between 2008-09 and 2011-12. These cable operators had also not submitted their returns in Form 'E'. The concerned officers had neither kept track of the non-receipt of returns in Form 'E' nor reviewed the Recovery Register. This resulted in non-recovery of Ent.D aggregating to ₹ 2.36 crore from 536 cable operators. Further, interest at the prescribed rates was also leviable.

After we pointed out the cases, the Department accepted the observation and communicated recovery of ₹ 29.22 lakh from 69 cable operators during August 2011 and March 2013. Report on recovery of the balance amount is awaited.

⁷ Mumbai (Zones II, III, IV, V, VI, VII, VIII and X).

⁸ Amravati, Beed, Chandrapur, Gondia, Pune (Zones B, F, G and O).

⁹ Pune (Zones F, K, N and O).

¹⁰ Akkalkot, Ashti, Ambarnath, Borivali (Zone VII), Kalyan, Kurla at Mulund (Zones VIII, IX, X, XI, XII), Palghar, Shahapur, Talasari, Vasai and Vikramgad.

We reported the matter to the Government in May 2013; their reply is awaited (January 2014).

6.4.2 Non-recovery of Ent.D from permit room/beer bar with live orchestra

Under the provisions of section 3(11) of BED Act, read with order dated 17 September 2010 issued by the Revenue and Forest Department, Ent.D is recoverable at the rate of ₹ 50,000 per month from permit room/beer bar with live orchestra located in Municipal Corporation Areas with effect from 20 January 2010. Such duty is recoverable in advance by the 10th day of the month for which it relates and is watched through the live orchestra recovery register.

As per Section 9B of the BED Act, interest at the rate of 18 *per cent* per annum for the first 30 days and 24 *per cent* per annum thereafter is also to be levied in case of default in payment. Demand notice is issued for payment of duty and non-compliance of the demand notice is punishable by imprisonment for a term extending up to six months or fine not more than ₹ 5,000 or both.

During test check of live orchestra recovery register of 12 offices (six¹¹ DCs and six¹² TMs) between May 2012 and March 2013, we noticed that Ent.D amounting to ₹ 2.26 crore was not recovered from 59 permit rooms /beer bars with live orchestra during various periods between 2010-11 and 2011-12. Thus, non-monitoring of the register by the concerned authorities resulted in non-realisation of Ent.D aggregating ₹ 2.26 crore. Further, interest at

the prescribed rate was also leviable.

After we pointed out the cases, the Department accepted the observation and communicated recovery of ₹ 1.05 crore from 32 defaulters between June 2012 and July 2013. Report on the recovery of the balance amount is awaited.

We reported the matter to the Government in May and August 2013; their reply is awaited (January 2014).

¹¹ Mumbai (Zones IV, VI, VII, IX, X and XI).

¹² Andheri (Zones I and II), Borivali (Zone V), Kurla at Mulund (Zones VIII, X and XI).

6.4.3 Non-recovery of Ent.D in case of dishonoured cheques

As per the provisions of BED Act, Ent.D can either be paid in cash or through cheque. Further, if the cheque through which Ent.D is paid is dishonoured for any reasons whatsoever, the Department has to immediately recover the amount in cash along with interest from the defaulters and also initiate action under the provisions of Section 138 of Negotiable Instruments Act (Amended), 1988 (NI Act).

During test check of the records of nine offices (three¹³ DCs, one¹⁴ RDCs, one¹⁵ EDO and four¹⁶ TMs), between March 2010 and July 2012, we noticed from the cheque/ dishonoured

cheque register that in 50 cases, cheques issued by cable operators for payment of Ent.D aggregating ₹ 13.03 lakh were dishonoured during various periods between 2008-09 and 2011-12. These amounts should have been recovered in cash along with interest. The concerned officers neither took any action to recover the amount from the defaulters nor initiated proceedings as contemplated under the NI Act. This resulted in non-realisation of Ent.D aggregating ₹ 13.03 lakh and interest thereon.

After we pointed out the cases between April 2010 and August 2012, Department communicated recovery of ₹ 9.96 lakh from 38 defaulters between April 2011 and March 2013. A report on recovery of balance amount is awaited.

We reported the matter to the Government in May 2013; their reply is awaited (January 2014).

¹³ Mumbai (Zones I, III and VII).

¹⁴ Pune (Zone G)

¹⁵ Pune (Zone B)

¹⁶ Ambarnath, Andheri (Zone I), Kurla at Mulund (Zones IX and X)

6.4.4 Non-levy of penal interest on delayed payment of Ent.D

DC (Zone-I Mumbai), RDC Solapur and TM Ambernath

As per the provisions of Section 3(15) of the BED Act, Ent.D shall be levied and paid by the cable operator by 10th of the subsequent month and as per section 3(11) and (17) Ent.D shall be levied and paid by the proprietors of dance bar/discotheque in advance by the 10th of every calendar month. Further, as per Section 9B, where the proprietor who provides the entertainment fails to pay the amount of Ent.D due under section 3 within the period prescribed or the composition sum fixed under section 9A, he shall be liable to pay to the Government in addition to the amount of Ent.D or composition sum so payable, a penal interest at the rate of 18 *per cent* per annum for the first 30 days and at the rate of 24 *per cent* per annum thereafter on such amount from the date such amount becomes payable till the amount and interest is fully paid.

During test check of three offices in June and August 2012, we noticed from the recovery register, challans and 'B' returns that in 18 cases pertaining to the periods 2007-08 to 2011-12, penal interest amounting to ₹ 5.91 lakh was not levied though there were delays ranging from 16 to 390 days in payment of Ent.D.

After we pointed out the cases, the DC and RDC accepted the observation and communicated recovery of ₹ 3.49 lakh from five

defaulters between October 2012 and March 2013 and TM, Ambernath stated that the matter will be verified and demand notices would be issued after confirmation.

We reported the matter to the Government in May 2013; their reply is awaited (January 2014).

6.4.5 Non-levy of penal interest on various service providers of Direct to Home (DTH)

DC (DTH) Mumbai City

As per GR dated 4 September 2008 issued by Revenue and Forest Department, Government of Maharashtra, the proprietor of authorised service provider has to remit entertainment duty into the Government account on or before 10th of every month. Where a proprietor fails to pay the amount of duty within the prescribed period, he shall be liable to pay to the Government, in addition to the amount of duty, a penal interest at the rate of 18 *per cent* per annum for the first 30 days and at the rate of 24 *per cent* per annum thereafter, on the amount of duty, from the date such amount becomes payable till the amount and interest is fully paid.

During scrutiny of monthly statement of Ent.D along with Bill cum Cheque Register during January and February 2013, we noticed that four service providers had delayed payment of Ent.D aggregating ₹ 23.36 crore by one to 94 days during various periods between April 2011 and February 2012. The Department had neither levied nor demanded interest from these service providers

which resulted in non-levy of penal interest amounting to ₹ 42.50 lakh.

After we pointed out the matter in March 2013, the Department accepted the observation. A report on the recovery is awaited.

We reported the matter to the Government in May 2013; their reply is awaited (January 2014).

6.4.6 Non-forfeiture of security deposits

DCs (Exemption), Mumbai and MSD

During test check of the PLA and cash book of two offices during February 2012 and March 2013,

As per the provisions under Rule 14 of the Bombay Entertainment Duty Rules, 1958, every organiser shall pay security deposit to the prescribed officer as that officer may decide. If an organiser fails to submit returns under Rule 16 or 21 within 10 days of the date of the performance of the entertainment or such extended period not exceeding one month, the prescribed officer may, after giving the organiser a week's notice, forfeit the security deposit.

we noticed that security deposits aggregating ₹ 49.84 lakh collected from 48 organisers for the events organised between August 2010 and March 2012 were still lying in PLA, outside the Consolidated Fund of

the State. Despite the failure on the part of the organisers to fulfill the prescribed conditions, the DCs had neither kept track of non-receipt of the returns nor issued notices for forfeiture of security deposits which resulted in non-forfeiture of security deposit aggregating ₹ 49.84 lakh received from 48 organisers. It may be mentioned here that since the organisers of

entertainment had not approached the Department for refund of security deposit in excess of the Ent.D payable, there is room for doubt that the Ent.D actually payable would have been in excess of the security deposit collected by the Department.

Similar observation was made in paragraphs 6.2.19 and 6.3.6 of the Reports of Comptroller and Auditor General of India (Revenue Receipts) for the years ended 31 March 2009 and 31 March 2012 respectively, wherein it was also recommended that a mechanism may be evolved to ensure that the accounts are submitted by the organisers of special events on time so as to assess the correct amount of Ent.D payable, enhancing the amount of security deposit and having a provision for penalty in case of non-submission of accounts. Action taken in this regard by the Government has not been received till date.

After we pointed out the cases in March 2012 and April 2013, the Department accepted the observation and stated that necessary action would be taken for the forfeiture of the security deposits and crediting the same into the Government Account. Further action in the matter is awaited.

This clearly indicates that the control mechanism was weak, as action was not taken till it was pointed by us.

The matter was brought to the notice of the Government (June 2013); their reply is awaited (January 2014).

SECTION C EDUCATION CESS AND EMPLOYMENT GUARANTEE CESS

6.5 Audit observations

During scrutiny of records in the various ward offices in two Municipal Corporations, we noticed cases of non-observance of provisions of the Act as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. The Government may evolve a suitable mechanism so that mistakes can be avoided, detected and corrected.

6.6 Non-observance of provisions of the Acts/Rules

The Maharashtra Education Cess and Employment Guarantee Cess Act, 1962 (MECEGC Act) provides for levy and collection of education cess (EC) and employment guarantee cess (EGC) along with property tax by the Municipal Corporation/Councils (MCs). We noticed that the concerned authorities in the Urban Development Department did not monitor the recovery of the cess(es) and its remittance into the Government account in cases mentioned in the succeeding paragraphs 6.6.1 and 6.6.2.

6.6.1 Non-remittance of penalty on delayed payment of EC-EGC

Chief Accountant (Finance), Municipal Corporation of Greater Mumbai (MCGM).

Under sections 4 and 6B of the MECEGC Act read with Rule 4 of the Collection and Refund Rules, cess and penalty collected by the MCs during a calendar week are required to be credited to the Government account before the expiry of the following week. If any MC defaults in payment of any sum under the Act, the Government may, after holding such enquiry as it thinks fit, fix a period for the payment of such sum. The Act also empowers the Government to direct the bank/treasury in which the earnings of the MC are deposited, to pay such sum from the bank account to the Government. There is no provision in the Act to levy interest or penalty on the delay in remittance of Government revenue by the MC.

During test check of the records relating to collection of EC-EGC in MCGM in January 2013, we noticed that ₹ 5.14 crore collected as penalty on delayed payment of EC amounting to ₹ 4.62 crore and EGC amounting to ₹ 51.78 lakh for the year 2011-12 had not been remitted in to the Government account. The

Department had not taken any action to recover the amount.

After we pointed out the case, the Department stated that the matter has been referred to Government. However, no follow up action has been taken by the Department.

We reported the matter to the Government in May 2013; their reply is awaited (January 2014).

6.6.2 Non-remittance of EC and EGC

Municipal Corporation of Greater Mumbai (MCGM) and Mira Bhayandar Municipal Corporation, Thane (MBMC).

During test check of the Tax Collection Register of two MCs between March 2011 and January 2013, we

As per the provisions under sections 4 and 6(b) of the MECEGC Act read with rule 4 of Education (Cess) Tax on Lands and Buildings (Collection and Refund) Rules, 1962, cess and penalty collected by the MCs during any calendar week are required to be credited into the Government account before the expiry of the following week. If any MC defaults in payment of any sum under the Act, Government may, after holding such enquiry as it thinks fit, fix a period for the payment of such sum. The Act also empowers the Government to direct the banks/treasury in which the earnings of the MC are deposited, to pay such sum from the bank account to the Government. There is no provision in the Act to levy interest or penalty on delay in remittance of Government revenue by the MC.

noticed that the MCs did not remit into Government account, the EC and EGC amounting to ₹ 315.65 crore collected by them during the period from February 2009 and March 2012. The Government also did not initiate any action either to fix a period for the payment of the dues or direct the bank to pay the amounts due from the accounts of the MCs.

After we pointed out the case, MCGM stated that the orders of the Competent Authority for remitting the collected amount

into Government Account were awaited. MBMC stated that the amount would be reconciled with the records of account branch and final position would be intimated. The fact, however, remains that the amount collected on behalf of the Government was required to be remitted into Government Account within the prescribed period which was not done.

We reported the matter to the Government in May 2013; their reply is awaited (January 2014).